THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.25479 OF 2005

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ORDER:

The petitioner-Toddy Tappers co-operative Society, Tandur, which is a society registered under the provisions of the A.P. Co-operative Societies Act, 1964, was issued licences for three toddy shops vide licence Nos.606, 607 and 608 dated 4.04.2002. The said licences are valid up to 31.03.2007.

While so, petitioner-society was served with notice dated 18.10.2005 by the 1st respondent-Prohibition & Excise Superintendent, Rajendranagar, calling upon to show cause as to why the three licences issued in its favour should not be cancelled. In the said notice it was alleged that on 4.10.2005 when the excise officials conducted a surprise check on the depot of petitioner society, Tandur, one person was found at the spot. That apart, six lorries filled with plastic crates containing bottles filled with toddy, apart from seven vats were found. On enquiry, the person present stated that he was a member of the petitioner society, Tandur and further stated that the toddy was loaded in the lorries for transporting toddy to the shops situated in and around Tandur. He also produced licence bearing No.608 dated 4.04.2002, which was valid upto 31.03.2007. Small quantities of toddy were taken from each crate and was tested with prescribed chemicals; however, it was found that it was free from adulteration. Thereafter, three samples were drawn under a panchanama and sent for further analysis by the Regional Prohibition & Excise Laboratory, Hyderabad through Judicial First Class Magistrate, Tandur after registering C.O.R.No.220/205-06 under Rule 24 of A.P. Excise (Arrack and Toddy Licence, General Conditions of Licence) rules, 1969. Subsequently, the Chemical Examiner, Prohibition & Excise Laboratory, Hyderabad vide report dated 5.10.2005 opined that the toddy was mixed with Alprazolam, which was dangerous and consumption of such toddy would badly affect public health. Basing on the said report, the entire quantity of adulterated toddy was destroyed on 5.10.2005 on the spot, and six lorries together with crates and empty bottles and wooden vats were seized under a panchanama and they were deposited in the Court of Judicial First

class Magistrate, Tandur.

It was further alleged that the toddy depot, Tandur having licence No.2, dated 18.10.2005 was meant to pool and supply toddy to constituent shops of petitioner-society bearing licence Nos.606, 607 and 608 dated 4.04.2002 and detection of adulteration in toddy depot, Tandur clearly established that the President of TCCS was involved in sale of adulterated toddy through constituent shops.

Hence, to prevent selling of adulterated toddy through any of its constituent shops as a precautionary measure and in the interest of public health, licences of TCCS groups of Tandur, namely, licence Nos.606, 607 and 608 dated 4.04.2002 were suspended by order dated 17.10.2005 and the society was called upon to show cause as to why its licences should not be cancelled.

Aggrieved by the show cause notice dated 18.10.2005, petitioner-society filed this writ petition contending, *inter alia*, that the petitioner-society is in no way concerned with the vehicles and toddy said to have been seized on 4.10.2005. It is stated that the person by name D. Narayana Goud, who was said to be present in the depot at the time of the alleged inspection was not a member of the society. It is also stated that no samples were collected from the licensed premises and licensed shops were never inspected. Though, it is admitted that in addition to the above three toddy shops, a depot licence vide licence No.2 dated 18.10.2004 was issued to the petitioner-society, it was contended that subsequently, in view of policy decision of the Government under G.O.Ms.No.551 dated 29.04.2005 abolishing toddy depots and the depot licence issued to the petitioner-society was cancelled by the Prohibition & Excise Superintendent by order dated 14.06.2005. Thus, the depot licence is not subsisting and no depot is functioning. Thus, the entire inspection as well as seizure alleged to have been effected on 4.10.2005 and particularly drawal of samples was denied and it is stated that the petitioner-society was in no way concerned with the alleged offence of selling adulterated toddy. It is further stated that on 6.10.2005, petitioner-society requested the 1st respondent to send one sample to the independent Laboratory and the same was ordered, and after analysis a report dated 15.11.2005 was received, which shows that Chloral Hydrate, Diazepam or Alprazolam were absent in the samples of toddy.

Hence, according to the petitioner-society suspension of licences is arbitrary and illegal and consequently, proceedings initiated for cancellation of licences are

unwarranted, as they are contrary to law.

During the pendency of the above Writ Petition, 1st respondent by order dated 20.02.2006 cancelled all the three licences of the petitioner-society. In the circumstances, petitioner-society got the prayer in the Writ Petition amended seeking a declaration that the said order of cancellation is arbitrary and illegal.

In the counter-affidavit filed on behalf of respondents, while reiterating the version in the show-cause notice it is further stated that as per the confession made by Narayana Goud, toddy available in the depot was meant for supply to its constituent shops and also to the shops in surrounding villages. Subsequently, as per the report of Chemical Examiner, Prohibition & Excise Laboratory, Hyderabad, it was found that the toddy was adulterated and mixed with Alprazolam was injurious to public health, and therefore, the petitioner-society had contravened Rule 5 of A.P. Excise (Tapping of Trees and Toddy Shops, Special Conditions of Licences) Rules, 1969 and rule 11 of A.P. Excise (Arrack and Toddy Licences, General Conditions) Rules, 1969. Accordingly, licences were suspended, pending enquiry and petitioner-society was serviced with notice to show cause as to why licences should not be cancelled. The petitioner-society though made a representation dated 30.11.2005 and 17.12.2005 requesting further time for filing explanation, no such explanation was submitted. In the circumstances, licences of the petitioner-society were cancelled by order dated 20.02.2006, which is in accordance with law and does not warrant any interference.

I have heard learned counsel for both parties and perused material on record.

Learned Senior Counsel – Sri N. Subba Reddy, appearing for the petitioner-society vehemently contended that the entire version of respondents was false and without any basis. At any rate, according to the learned counsel, cancellation of licences of three toddy shops on the allegation that adulteration was found in one of the shops is arbitrary and illegal. It is also contended that such action under Section 31(2) of the A.P. Excise Act is permissible only after cancellation of licence of shop No.3, in respect of which allegation was made and after affording due opportunity to the petitioner-society.

On the other hand, learned Government Pleader contended that since admittedly samples of toddy were found to be adulterated which is injurious to public health,

and since the petitioner-society failed to offer any explanation, respondents have rightly cancelled the licences.

Learned Government Pleader further submitted that the inspection conducted on 4.10.2005 revealed that the petitioner-society was pooling toddy unauthorizedly for the purpose of transportation to the shops situated in surrounding villages as well as to the three licensed shops. Hence, the petitioner-society acted in breach of the conditions of licences.

The material on record shows that the petitioner-society was granted licences in respect of three shops at Tandur bearing Shop Nos.1, 2 and 3 under licences bearing Nos.606, 607 and 608 dated 4.04.2002, valid up to 31.03.2007. All the three shops were being managed by the petitioner-society, represented by its President. The rentals of TCS group at Tandur was fixed at Rs,4,50,000/- per annum and the ration was fixed as 9,000 trees. Even according to the petitioner-society the three toddy shops along with trees and rentals were being distributed amongst its members. It is also not in dispute that the petitioner-society obtained a depot licence vide licence No.2 dated 18.10.2004. However, subsequently, by virtue of G.O.Ms.No.551, Revenue (Excise-II) Department, dated 29.04.205 licences of all the toddy depots existing in the District, including the depot run by petitioner-society stood cancelled with immediate effect. Petitioner-society admits that in pursuance of the said orders, depot licence granted to the petitioner-society was also cancelled vide proceedings dated 14.06.2005.

Under depot licence dated 18.10.2004, petitioner-society was entitled to pool toddy at the depot to supply and distribute it to constituent shops in separate receptacles, instead of transporting direct to all the individual shops. The specific allegation as can be seen from the panchanama is that in spite of cancellation of depot licence, the petitioner-society was still maintaining its depot and at the time of inspection six lorries stocked with crates containing toddy bottles were found. It is also alleged that the person who was present at the depot produced a licence relating to shop No.608 and confessed that he is a member of petitioner-society. Samples were drawn and they were sent to Chemical Examiner, Regional Prohibition & Excise Laboratory, Hyderabad. The Chemical Examiner's report revealed that the same was mixed with Alprazolam substance, consumption of which is injuries to public health. In the circumstances, the only presumption that can be drawn is that adulterated toddy pooled at the depot was being distributed to all the three shops in respect of which

the petitioner-society was holding licences. The panchanama shows that State Task force Officials conducted check on the toddy depot located at Saipur village, Tandur Mandal. It is not in dispute that under licence NO.2 dated 18.10.2004 the petitioner-society was issued a depot licence at Saipur village. Nothing has been placed before this court to show that any other depot was functioning in the said village and that the depot, which was inspected by the State Task Force officials was not under the control of the petitioner-society.

At any rate, it is a pure question of fact and in case the petitioner-society denies the allegation and claims that it has nothing to do with the said depot, it is for it to submit necessary explanation and place before the Officials relevant material to support it's claim. Having received show cause notice and having sought time for submitting explanation, petitioner-society failed to submit any explanation. In the circumstances, the 2nd respondent cannot be found fault with in cancelling licences in respect of three shops. Since the specific allegation is that toddy pooled at the depot was being transported to three shops held by the petitioner-society for sale to the general public, undoubtedly, it falls within the scope of Section 31(1)(b) of A.P. Excise Act, 1968, which empowers the licensing authority to cancel the licence in the event of breach of any of the terms and conditions of the licence.

The contention of the petitioner that since the allegation was only against shop No.3, in respect of which licence No.608 was granted, the licences of other two shops cannot be suspended and no steps can be initiated for cancellation of the same is also untenable and without any substance.

The panchanama shows that adulterated toddy was pooled at the depot, which was being transported to the shops under the management of the petitioner-society for sale to general public. Though the depot licence in favour of the petitioner-society was cancelled vide proceedings dated 14-6-2005, it was alleged that the petitioner-society was unauthorisedly running the depot and pooling the toddy for distribution to the 3 shops under its control. Hence, the burden is on the petitioner- society to establish that such depot was not functioning under its control and that the toddy found in the vehicles was not meant for transportation to its shops.

Though the learned Counsel contended that the impugned order was not in

conformity with Section 31 (2) of the Act, on a careful reading of Section 31(2) of the Act, I am of the opinion that the said provision has no application at all to the facts of the present case. In the case on hand, the orders of suspension as well as cancellation were based on the allegation that there was breach of terms and conditions of licences of all the three shops, but not shop No.3 alone. Hence, the two decisions relied upon by the learned Senior Counsel namely **T. Laxma Goud v. Excise Superintendent, Adilabad** and the recent decision in W.P.No.22959 of 2005 dated 26.10.2005, which arose out of Section 31 (2) of the Act, have no application at all.

Hence, the writ petition is devoid of merit and the same is accordingly dismissed. No costs.

However, it is made clear that this Court shall not be understood to have expressed any opinion on merits, and if the petitioner-society so chooses, it is at liberty to work out alternative remedy of appeal as available under law against the order of cancellation.

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(G. ROHINI, J.)

April 13, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.25479 OF 2005

13th April, 2006.

Between:

Toddy Tappers Co-operative Society, Tandur,

Tandur Mandal, Rangareddy District,

represented by its President –

Mr. Praveen Kumar. .. Petitioner.

And

Prohibition & Excise Superintendent,

Rajendranagar, Rangareddy District at

Hyderabad and another. .. Respondents.